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FEB 26 2003

Response Due: 3-13-03

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/495,715	02/01/2000	Hideyuki Miyata	1480.1003	5208

21171 7590 12/13/2002

STAAS & HALSEY LLP  
700 11TH STREET, NW  
SUITE 500  
WASHINGTON, DC 20001

EXAMINER

FAHMY, SHERIF R

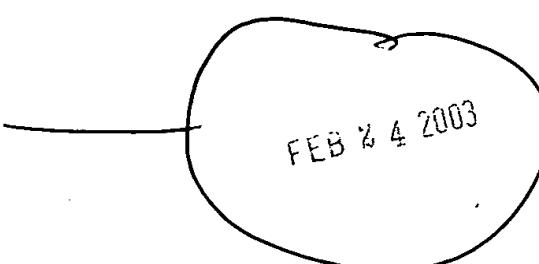
ART UNIT	PAPER NUMBER
2633	

DATE MAILED: 12/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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Technology Center 2600

Date  
stamp





<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/495,715	MIYATA ET AL.
	Examiner Sherif R. Fahmy	Art Unit 2633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 January 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
- 4) Claim(s) 1-23 is/are pending in the application.
  - 4a) Of the above claim(s) 1-5 and 11-23 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 6,7 and 9 is/are rejected.
- 7) Claim(s) 8 and 10 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

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#### Disposition of Claims

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 01 February 2000 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    - 1. Certified copies of the priority documents have been received.
    - 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

*Election of Species*

1. In a telephonic interview on Jan. 28, 2003, Attorney Paul I. Kravetz, Reg. No. 35,230, representing applicant, agreed that the claims indicated in "Response to Election/Restriction Requirement" filed Jan. 8, 2003, did not correspond to the elected species. Accordingly, we have agreed that claims 6-10 corresponding to a single species represented in fig. 4 and fig. 6 will be considered in this first action on the merits, not claims 1-12 as had been previously indicated in applicant's response.

*Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 6 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Terahara.

Regarding claim 6, Terahara teaches an optical communication apparatus comprising an optical modulating means (16) for modulating input light in accordance with a modulation signal to be transmitted and a regulating means (58) for regulating the intensity of light which is transmitted through an optical transmission line from said optical modulation means (output from 58 on transmission lines. (See fig. 13, fig. 5).

Regarding claim 9, said regulating means is an optical attenuating means (58) for attenuating the intensity of light exit from an output port of said optical modulating means in accordance with the intensity of light in said optical modulating means.

4. Claim 6-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Nagakubo et al.

Regarding claim 6, Nagakubo teaches an optical communication apparatus comprising an optical modulating means (2) for modulating input light in accordance with a modulation signal to be transmitted and a regulating means (20) for regulating the intensity of light which is transmitted through an optical transmission line from said optical modulation means, (fig. 14).

Regarding claim 7, said regulating means is an optical attenuating means (20), for attenuating intensity of light entered to an input port of said optical modulating means in accordance with the intensity of light in said optical modulating means (1). Transmission occurs over a transmission line inherently, since the invention disclosed in Nagakubo is specifically directed to communication systems that use optical fibers (col. 1- lines 1-35).

***Allowable Subject Matter***

5. Claims 8 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

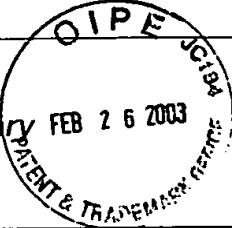
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mita and Roberts are cited for disclosing similar techniques of stabilizing the light output of an optical modulator using optical attenuating means.
  
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherif R. Fahmy whose telephone number is 703-305-8088. The examiner can normally be reached on 8:30AM-6:00PM(Mo-Th) 8:30AM-5:00PM(2nd & 4th Fr).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on 703-305-4729. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3988 for regular communications and 703-305-3988 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4800.

SRF  
February 5, 2003

*leslie pascal*  
LESLIE PASCAL  
PRIMARY EXAMINER

 <b>Interview Summary</b> FEB 26 2003		Application No.	Applicant(s)
		09/495,715	MIYATA ET AL.
		Examiner	Art Unit
		Sherif R. Fahmy	2633

All participants (applicant, applicant's representative, PTO personnel):

(1) Sherif R. Fahmy. (3) Mr. Paul I. Kravetz.  
 (2) \_\_\_\_\_. (4) \_\_\_\_\_.

Date of Interview: 28 January 2003.

Type: a) Telephonic b) Video Conference  
 c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.  
 If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: 6-12.

Identification of prior art discussed: N/A.

Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

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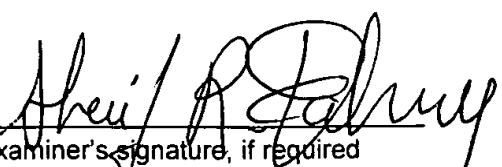
Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Examiner and applicant's representative agreed that claims 6-12 do not correspond to the species indicated in the Response to Election/Restriction Requirement. Accordingly, it was agreed that claims 6-10 will be considered instead, as corresponding to a species represented by figures 4 and 6.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i) It is not necessary for applicant to provide a separate record of the substance of the interview(if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

  
 Examiner's signature, if required

## Summary of Record of Interview Requirements

FEB 26 2003

PATENT & TRADEMARK OFFICE  
U.S. DEPARTMENT OF COMMERCE

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

#### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

##### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

##### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

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It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case unless both applicant and examiner agree that the examiner will record same. Where the examiner agrees to record the substance of the interview, or when it is adequately recorded on the Form or in an attachment to the Form, the examiner should check the appropriate box at the bottom of the Form which informs the applicant that the submission of a separate record of the substance of the interview as a supplement to the Form is not required.

It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

#### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Notice of References Cited

FEB 26 2003

Application/Control No.

09/495,715

Applicant(s)/Patent Under

Reexamination

MIYATA ET AL.

Examiner

Sherif R. Fahmy

Art Unit

2633

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-5,900,621	05-1999	Nagakubo et al.	250/205
	B	US-6,268,945	07-2001	Roberts, Kim Byron	359/161
	C	US-6,134,034	10-2000	Terahara, Takafumi	359/124
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-		1460. 1003 PIK	
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N	JP 57004625 A	01-1982	Japan	MITA, AKIRA	H04B 09/00
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

FORM PTO-1449

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICEATTORNEY DOCKET NO.  
1460.1003

APPLICATION NO.

## LIST OF REFERENCES CITED BY APPLICANT

(Use several sheets if necessary)

FIRST NAMED INVENTOR

Hideyuki MIYATA et al.

FILING DATE

February 1, 2000

GROUP ART UNIT

JG625 U.S. PTO 09/495715

FEB 26 2003

P A T E N T &amp; T R A D E M A R K O F F I C E

## U.S. PATENT DOCUMENTS

*EXAMINER INITIAL		DOCUMENT NO.	DATE	NAME	CLASS	SUB-CLASS	FILING DATE
	AA						
	AB						
	AC						
	AD						
	AE						
	AF						

## FOREIGN PATENT DOCUMENTS

		DOCUMENT NO.	DATE	COUNTRY	CLASS	SUB-CLASS	TRANSLATION YES NO
	AG						
	AH						
	AI						
	AJ						
	AK						
	AL						

## OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)

<i>SRF</i>	AM	Patent Abstracts of Japan of Japanese Patent Application Laid-open Publication No. Hei9-61768, May 7, 1997.
	AN	
	AO	

EXAMINER <i>Shen R. Gehring</i>	DATE CONSIDERED <i>2/5/2003</i>
------------------------------------	------------------------------------

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.



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Dear Patent and Trademark Office Customer:

It is important to us that you are satisfied with the services we provide. Therefore, Technology Center 2600 would like to take this opportunity to tell you about one of our most successful customer service projects, our Customer Service Office (CSO), and to ask you for your help in expanding this project. Conventionally filed amendments and inquiries are received at the USPTO's central mail room and pass through numerous processing stages before they arrive in Technology Center 2600. Each processing stage adding inherent chances for mishandling and delay. To improve inquiry and amendment handling Technology Center 2600's Customer Service Office was established to directly receive and process faxed amendments and inquiries.

Over the last two years there has been a rapid growth in the volume of these faxes. In the first quarter of FY01, 1300 faxed amendments were received. In the first quarter of FY02, this increased to 1900 faxed amendments, and in the first quarter of FY03, there was an even greater increase to 3000 faxed amendments. Similarly, the number of status inquiries received by our CSO has steadily grown and in the first quarter of FY03, there were 2280 status inquiries. More importantly, as the number of amendments and inquiries has increased, the CSO processing time has decreased. Currently the average amendment processing time from receipt to case entry is well under 4 days. Filing through Technology Center 2600's CSO has proven to be a great improvement over the conventional method for both our customers and us. As an added benefit we can tell you that to date we have not experienced a single instance where an application had to be subsequently processed for the withdrawal of the holding of abandonment based upon a lost amendment submitted through this process. If you are already using the Technology Center 2600 CSO, we thank you. If you are not, please consider using our Customer Service Office and help us expand its success.

### Amendments and Status Inquiries by Fax - 703-872-9314:

For After Final amendments, our goal is to have official faxes matched, entered and delivered to the SPE/examiner within 48 hrs from receipt. For all other official documents our goal is to have official faxes entered within 72 hours of receipt. *If we cannot match your fax with the case, we will call you to let you know the status.* Please use fax number 703-872-9314 for ALL Technology Center 2600 official communications.

### Status Inquiries by Telephone - 703-306-0377:

The Technology Center 2600 Customer Service Office is open to serve you from 8:30am to 5pm EST. Our main telephone number is 703-306-0377. If you need information regarding your application, feel free to give us a call.

In order to assist you quicker, we ask that on the cover sheet, you indicate how many pages you're transmitting and a point of contact in case of any errors that might arise. If your fax machine is properly programmed with your heading and fax number, you will receive an automated receipt confirming reception of your fax. If you prefer to call and confirm receipt of your fax, a point of contact from our customer service office is provided below.

Thank you,  
Arthur McCloud  
Technology Center 2600 Customer Service Office